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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21st DAY OF AUGUST 1998

BEFORE

THE HON'BLE MR. JUSTICE P. VISHWANATHA SHETTY

H.R.R.P. No. 687 /1996

Sri P. Ramalinga Setty,
aged about 65 years,
S/o late P. Puttaiah Setty,
B.H. Road, Arasikere,
Hassan District.
.. Petitioner

(By Sri M.S. Subbarayappa,
Advocate)

Vs.

Sri Pyare Jan, major,
S/o Sri Mather Sab,
M/s Nirmal Dry Cleaners,
P.P. Circle, B.H. Road,
Arasikere,
Hassan District.
.. Respondent

(By Sri O. Mahesh,
Advocate)

House Rent Revision Petition filed under Section 115 of the Code of Civil Procedure challenging the order dated 19-1-1996 passed by the learned Addl. District Judge at Hassan in HRC.RP.No.17/90 reversing the order dated 19-4-1990 passed by the learned Principal Munsiff at Arasikere in HRC No.18/85.

This revision petition coming on for hearing before Court and the same having been heard and reserved, the Court this day pronounced the following:

O R D E R

This is landlord's revision petition.



2. In this revision petition, the landlord has called in question the correctness of the order dated 19th of January 1996 made in H.R.C.No.17/1990 by the Court of Additional District Judge, Hassan, reversing the order dated 19th of April 1990 made in H.R.C.No.18/85 by the Court of Principal Munsiff, Arasikere, wherein the learned Munsiff had directed eviction of the respondent-tenant from the petition schedule premises under Section 21(1)(h) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act").

3. The parties to the revision petition, in the course of this order, will be referred to as the landlord and tenant.

4. The undisputed facts that may be relevant for the disposal of this revision petition, may be briefly stated as follows:

(a) The landlord sought eviction of the respondent on the ground that the petition schedule premises is reasonably and bonafide required for the purpose of occupation by his



son one Sri Balakrishna, who has been examined as P.W.2, for the purpose of carrying on business in sale of clothes.

(b) The tenant resisted the eviction petition on the ground that there is no bonafides in the claim made by the landlord for eviction of the tenant; and the tenant is sought to be evicted on the ground that he had refused to pay the higher rent of Rs.300/- ^{per month} demanded by the landlord. According to him, he became the tenant of the petition schedule premises in the year 1972 agreeing to pay monthly rent of Rs.70/- and the same was gradually increased to Rs.170/- per month. It is his further case that if an order of eviction is passed, the tenant will be put to greater hardship than the landlord.

(c) The learned Munsiff, on appreciation of the evidence on record, passed an order of eviction against the tenant. However, the learned District Judge, by the order under revision, has reversed the said finding of



The learned Munsiff. As noticed by me earlier, aggrieved by the said order, this revision petition is presented.

5. Sri Subbarayappa, learned Counsel appearing for the landlord, assailed the finding recorded by the learned District Judge on the ground that though there is a partition between the landlord and his son-P.W.2, the partition is only a partial partition and in so far as the petition schedule premises is concerned, the same continues to be the joint family property; and as such, the landlord is entitled to seek eviction of the tenant for the purpose of accommodating his son-P.W.2. It is his **✓further✓** submission that P.W.2 being a dependent son of the landlord, the landlord is entitled to seek for eviction of the tenant; and, therefore, the entire approach made by the learned District Judge on this aspect of the matter is erroneous in law.

6. Sri O.Mahesh, learned Counsel appearing for the respondent, strongly supported the order under revision. He pointed out that

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the learned District Judge, on appreciation of the evidence, having categorically found that P.W.2 is a divided son of the landlord and having independent source of income and the claim made by the landlord is neither reasonable nor bonafide, this Court, in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure, cannot interfere with the said finding. He further submitted that the tenant is a very poor person, who is a 'Dhobi' by profession, carrying on his Laundry business in the petition schedule premises; and if an order of eviction is passed, the tenant will be put to greater hardship than the landlord. It is his further submission that the evidence on record clearly establishes that the landlord has come into possession of the premises measuring 30' x 50' situated at a busy place known as Masjid Road, which is far bigger than the petition schedule premises; and, therefore, the need of the landlord, if any, to accommodate his divided son-P.W.2 as sought to be made out by the landlord, could be easily satisfied by accommodating his son in the premises located in Masjid Road.



7. Having heard the learned Counsel appearing for the landlord and the learned Counsel for the tenant, I am of the view that there is no merit in this revision petition and the same is liable to be rejected.

8. I have carefully gone through the order under revision and the evidence on record. The learned District Judge, on consideration of the evidence, has, in paragraph-18 of the order, held as follows:

" Therefore, the evidence clearly discloses that there was lot of suspicion in the claim of the petitioner that he wanted to accommodate his son P.W.2. The petitioner's claim has not been substantiated by leading cogent evidence. Though the petitioner had sufficient findings and P.W.2 had capacity to do the intended business, the petitioner had no bonafides as evidence was something contrary to the pleadings when the question of PW 2's financial dependants of PW 1 was considered. Under these circumstances, the petition could not have been allowed as a bonafide intention to accommodate PW 2 was not established."

The learned District Judge, on appreciation of evidence, has further found that the landlord has sought eviction of the tenant to





accommodate his son-P.W.2, who, even according to the admission made by P.W.2, is a divided member of the family; and, therefore, he is not entitled to seek for eviction of the tenant from the petition schedule premises. I am fully satisfied that the finding recorded by the learned District Judge that there is no bonafides in the claim made by the landlord for seeking eviction of the tenant, is fully justified and the said finding does not suffer from any error muchless an error which calls for interference by this Court in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure. Further, it is admitted by P.W.1, for whose benefit the landlord sought eviction of the tenant, that he is a divided son of the landlord. It is necessary to point out that it is not the case of the landlord that though P.W.2 is a divided son of the landlord, he is still economically depending upon him ~~xxxxxxx~~ and as such, he requires the petition schedule premises reasonably and bonafide for the purpose of accommodating his son, who is economically dependent on him. In fact, the



factum of partition between the landlord and his son, was not disclosed either in the eviction petition filed or in the course of the evidence of the landlord, who has been examined as P.W.1. In the course of cross-examination, P.W.2 has stated that there was a division between him and his father, the landlord, three or four years prior to the date of his giving evidence and there was even a document to evidence the partition. No doubt, he has stated that the petition schedule premises was not divided since it had not been vacant. But, as rightly observed by the learned District Judge in paragraph-10 of his order, it is not the case of the landlord that the petition schedule premises was not divided and, therefore, he is seeking eviction of the tenant for the purpose of his son. On the other hand, as noticed by me earlier, the definite case put forward by the landlord was that the petition schedule premises was required for the purpose of his son, who is economically dependent upon him. But, the evidence of P.W.2 himself totally belies the said case set up by the landlord. Under

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these circumstances, it is difficult to accept that the petition schedule premises was not divided as claimed by P.W.2, though there has been division of other family properties. Further, unless there is clear evidence to show that even after the division of the family properties, P.W.2 had a serious set back and he is totally depending upon his father, it is not possible to come to the conclusion that P.W.2 is economically dependent upon his father. Section 21(1)(h) of the Act entitles a landlord to seek eviction of a tenant from the premises occupied by him when the landlord reasonably and bonafide requires the said premises for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that, the premises is required for occupation for the purposes of trust. In the instant case, admittedly, the landlord does not require the premises for the purpose of occupation by himself. It is only for the occupation by his son P.W.2 for the purpose of his business. As noticed by me earlier, the evidence of P.W.2 himself shows that he



is the divided son of the landlord. It is not the case of the landlord either in the pleadings in the petition or in his evidence that though P.W.2 has been divided from him, still the petition schedule premises held by him for his benefit, or on account of financial dependency ^{of} ~~is~~ P.W.2 on the landlord, the landlord ~~is~~ obliged as a father to hold the petition schedule premises for the benefit of P.W.2. The evidence, on this aspect of the matter, is totally wanting in the case. The learned District Judge, after elaborately considering the pleadings of the parties and evidence on record, has passed the impugned order. I do not find any infirmity in the finding recorded by the learned District Judge that since P.W.2 is a divided son of the landlord and he is not economically dependent on the landlord, the landlord is not entitled to seek eviction of the tenant from the petition schedule premises. In this connection, it is relevant to refer to the decision of this Court in the case of Shah Seshmal v. Venkatarathanam (C.R.P.No.1651/74 disposed of on 9th of April 1975), wherein His Lordship Justice

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Venkataswami (as he then was) has taken the view that the landlord cannot seek eviction under Section 21(1)(h) of the Act for accommodation of his son, who is divided from him in every respect. The said decision was also followed by this Court in the case of Radha Krishnan v. Thayappa Setty (ILR 1985 KAR 3182), wherein this Court has held "the requirement of a son of the landlord, who is not depending upon his father, cannot be said to be the requirement of the father within the meaning of Section 21(1)(h) of the Act". The principle laid down by this Court in the aforesaid two cases, fully applies to the facts of the present case.

9. Further, though the learned District Judge has not considered the question of comparative hardship, in view of his finding that the landlord was not entitled to seek eviction of the tenant for the purpose of his divided son and also on the ground that the claim made by the landlord was not bonafide, I am of the view that on the basis of the evidence on record, even if it is held that the claim made by the landlord is reasonable

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and bonafide and he is entitled to seek eviction of the tenant, he must fail in this revision petition on the ground that the tenant will be put to greater hardship than the landlord and, therefore, he is not entitled to seek eviction of the tenant. The evidence on record shows that the tenant is carrying on his business in laundry (Dhobi). The petition schedule premises is situated in a mofusil town. The nature of the business of the tenant would disclose that he is a small person. The evidence on record shows that the landlord is financially very sound. The evidence also shows that the landlord has come into possession of the premises measuring 30' x 50' located on Masjid Road. The tenant has been carrying on business in the petition schedule premises ever since the year 1972. If he is evicted from the petition schedule premises, he is likely to be deprived of the very source of his livelihood resulting in irreparable hardship and injury to his family. While considering the comparative hardship of the parties, the consideration that will have to weigh in the mind of the Court varies from facts and

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circumstances of each case. It depends upon the comparative status of the landlord and tenant; their background; the nature of the premises, whether it is residential or non-residential; the availability of the suitable alternative premises; the efforts made by each one of them to find out alternative accommodation and various other **relevant** circumstances. It is not possible to number the circumstances in seriatim and to say that only those matters must be taken into consideration while considering the relative hardship of the parties. In this background, on the basis of the evidence, if relative hardship is weighed, I am of the view that the tenant will be put to greater hardship than the landlord if an order of eviction is passed against him. Therefore, on this ground also, the claim of the landlord for eviction of the tenant is required to be rejected.

10. For all the aforesaid reasons, I do not find any merit in this revision petition. Therefore, the same is liable to be rejected.

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11. Accordingly, the revision petition is rejected.

12. However, no order is made as to costs.

Sd/-
JUDGE



ANB.